

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
)	2:19-CR-19-1D
vs.)	
)	
TOBY PAINTER,)	
Defendant.)	
_____)	

DECEMBER 22, 2020
SENTENCING HEARING
BEFORE THE HONORABLE JAMES C. DEVER III
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

JAKE PUGH, ASSISTANT U.S. ATTORNEY
U.S. Attorney's Office
150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601

On Behalf of the Defendant:

KATHERINE SHEA, FEDERAL PUBLIC DEFENDER
Federal Public Defender's Office
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AMY M. CONDON, CRR, RPR, CSR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Tuesday, December 22, 2020, commencing at 3:40 p.m.)

2 P R O C E E D I N G S

3 THE COURT: We'll next take up the sentencing of
4 Toby Painter.

5 (Pause in the proceeding.)

6 THE COURT: Ms. Shea, are you and Mr. Painter ready
7 to proceed?

8 MS. SHEA: We are.

9 THE COURT: Mr. Pugh, is the Government ready?

10 MR. PUGH: Yes, Your Honor.

11 THE COURT: At this time I'd ask that Mr. Painter be
12 sworn or affirmed.

13 (The defendant, Toby Painter, was duly sworn.)

14 THE COURT: Mr. Painter, do you understand that
15 having been sworn, that your answers to my questions are
16 subject to the penalty of perjury; and if you were to lie to
17 me, you could be prosecuted for perjury or for making a false
18 statement, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you taken any kind of medicine or
21 any other substance in the last 48 hours that would affect
22 your ability to hear and understand this proceeding?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you know why you're here today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Ms. Shea, do you have any reason to
2 doubt Mr. Painter's competence to go forward today?

3 MS. SHEA: No, Your Honor.

4 THE COURT: Does the Government have any reason to
5 doubt Mr. Painter's competence to go forward today?

6 MR. PUGH: No, Your Honor.

7 THE COURT: Based on Mr. Painter's answers to my
8 questions, my observations of Mr. Painter and the answers from
9 counsel, I find that he is competent.

10 Mr. Painter, you're here today, having entered a
11 plea of guilty pursuant to a plea agreement of the charge of
12 enticement of a minor. I formally accept the plea agreement.

13 The sentencing guidelines are no longer mandatory;
14 they're advisory.

15 Nevertheless, I'm to take into account the
16 now-advisory guidelines. I do this by initially making
17 findings of fact and calculating an advisory guideline range.
18 I'll then consider any motion that might be made that might
19 move that range either up or down. I'll then consider all
20 arguments that your lawyer makes on your behalf, any statement
21 you'd like to make, any victim allocution and the arguments of
22 the Assistant United States Attorney. I'll then determine
23 your sentence, and I'll announce it here in court today.
24 That'll be the process we'll follow.

25 Ms. Shea, did you receive a copy of the presentence

1 report?

2 MS. SHEA: We did.

3 THE COURT: Mr. Painter, did you talk with your
4 lawyer, Ms. Shea, about the presentence report?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: At this time the Court directs that the
7 presentence report be placed in the record under seal.

8 In accordance with Rule 32 of the Federal Rules of
9 Criminal Procedure, the Court accepts as accurate the
10 presentence report, except as to matters in dispute as set
11 forth in the addendum.

12 I have reviewed the entire report, including the
13 addendum. The addendum does contain some objections, the
14 first of which doesn't appear to affect the advisory guideline
15 range. The second two, the Government appears to have
16 conceded those or something in their 5K; is that correct?

17 MR. PUGH: Yes, Your Honor.

18 THE COURT: So are there any other objections?

19 MS. SHEA: No, Your Honor.

20 THE COURT: No other objections from the --

21 MR. PUGH: No other objections.

22 THE COURT: So for purposes of the guideline
23 calculation, then, the Government is saying that paragraph 48
24 should be zero?

25 MR. PUGH: That is correct.

1 THE COURT: Paragraph 49, are you saying that should
2 be zero?

3 MR. PUGH: 47 and 48.

4 THE COURT: 47 and 48.

5 So then 53 becomes 36; 54 becomes 41; and 57 becomes
6 39? Is that what your position is? And it's a 39 and a III?

7 MR. PUGH: I believe it would have lowered it by
8 four levels to 38.

9 THE COURT: 38. So 53 is 34 -- excuse me. 53 is
10 34; 54 is 39 --

11 MR. PUGH: By my calculation, defense and I have
12 agreed that four-level enhancements don't apply, which would
13 make 53 36; paragraph 54 would be 41; and then after three
14 levels are removed, then it would be 38 is the total offense
15 level.

16 THE COURT: Ms. Shea?

17 MS. SHEA: Your Honor, that's what we believe that
18 is the proper guideline range. A 38, III.

19 (Pause in the proceeding.)

20 THE COURT: All right. Paragraph 47 becomes zero,
21 paragraph 48 becomes zero, paragraph 49 remains two,
22 paragraph 53 is 36, paragraph 54 adds five to 41, minus three
23 is 38. 38 and a III is 292 to 365.

24 Any objection to that advisory guideline range from
25 the Government?

1 MR. PUGH: No, Your Honor.

2 THE COURT: Any objection from the defense?

3 MS. SHEA: No, Your Honor.

4 THE COURT: I'll hear first on the 5K from Mr. Pugh.

5 MR. PUGH: Yes, Your Honor.

6 Mr. Painter signed a cooperation plea agreement. He
7 participated in a two-hour debrief with FBI and local law
8 enforcement as I set forth in our motion. He gave extensive
9 information about Plymouth, North Carolina, where he's from,
10 in particular drug trafficking in that area as well as gang
11 activity. Law enforcement have since been able to corroborate
12 a large amount of what Mr. Painter said.

13 While it is historical information, I spoke with the
14 FBI, and they said they have already planned to begin an
15 investigation based on that information. They have assigned
16 an agent, and essentially Mr. Painter's debrief is going to be
17 the first report in that investigation. It is obviously at
18 early stages, but they believe that that will result in
19 charges down the road.

20 Mr. Painter's information is essentially the
21 foundation of those charges.

22 THE COURT: I will grant the Government's motion and
23 will give Mr. Painter credit for the substantial assistance
24 that he did provide to the United States.

25 At this time I'll hear from Ms. Shea on the 3553(a)

1 factors.

2 MS. SHEA: Thank you, Your Honor.

3 We are asking you to consider a sentence of less
4 than what the Government is recommending, Your Honor. And we
5 believe that it's supported by all of the 3553(a) factors.

6 Your Honor, in terms of the history and
7 characteristics of my client, Mr. Painter stands before you.
8 Today he's 32 years old. At the time of this offense, he was
9 29 years old. He grew up in the Plymouth, North Carolina
10 area. His parents split when he was a toddler. He grew up
11 primarily with his mother. His family was not wealthy by any
12 means, Your Honor, but did grow up in a good home.

13 His mother is supportive of him. They talk
14 regularly at the jail. She was not able to be here today,
15 Your Honor, but she does remain supportive. She presently
16 works as a home health worker.

17 Mr. Painter has never been married, Your Honor, but
18 he was in a long-term relationship with a woman. They had two
19 sons together. His older son is now seven years old. They
20 have split up. And since this offense, Your Honor,
21 Mr. Painter has not been in communication with his son. He
22 understands his mother's -- the mother's decision not to have
23 him be in contact, but he is very saddened by that and greatly
24 regrets that his actions have led to his absence in his son's
25 life.

1 They did have a second child together, Your Honor,
2 his -- it was a second son named Taleck, who died at two
3 months old from SIDS. Mr. Painter was the person who found
4 his son unresponsive; and that's, of course, something that
5 he -- you know, you never really move on from that, Your
6 Honor. It's something that he will carry with him forever.

7 In terms of his history and characteristics, Your
8 Honor, we do acknowledge that he does have other convictions.

9 His common law robbery, Your Honor, is from over a
10 decade ago when he was 21 years old. No violent convictions
11 since then. We believe that his record is taken into account
12 with the guideline range.

13 Your Honor, I can tell you that he's very remorseful
14 about the harm that he's caused the victim. I wanted to let
15 you know, Your Honor, that we did hire a local psychologist to
16 evaluate Mr. Painter who specializes in the evaluation and
17 treatment of sex offenders named Dr. Keith Hersh, and he
18 authored just a page and a half about him. I'm happy to pass
19 it up to Your Honor, if I may.

20 THE COURT: You may.

21 MS. SHEA: And what I want to highlight about that,
22 so Mr. -- Dr. Hersh interviewed Mr. Painter over many hours.
23 He administered tests that I'm sure Your Honor is familiar
24 with: The personality assessment inventory, the multiphasic
25 sex inventory. And I think notably is -- what we believe is

1 notable, Your Honor, is that he finds that Mr. Painter does
2 not suffer from a paraphilic disorder, which is notable, we
3 believe, because Mr. Painter is not someone that is motivated
4 to commit sex crimes by an underlying sexual deviance.

5 He also found that Mr. Painter is a good candidate
6 for treatment and is likely to respond well. He noted that
7 Mr. Painter has good verbal skills. He's intelligent. He
8 expresses an interest in mental health treatment. He does
9 find that he is antisocial, Your Honor, which we concede by
10 his record, but we also note that antisocial features decrease
11 with age.

12 In terms of the nature and circumstances of this
13 offense, Your Honor, I understand that this is not a good
14 crime, Your Honor, and I understand that. And we understand
15 that the sentence that the Court imposes today is going to be
16 a lengthy and serious punishment. We are asking you to
17 consider a sentence of between 10 and 15 years, and we believe
18 that the nature and circumstances of the offense support that
19 sentence.

20 There are a couple of important aspects of this
21 offense that we want to point out. First is the short
22 duration. So this happens over about a month-long period from
23 about Christmas 2017 to January 2018. And in doing this, Your
24 Honor -- I'm not trying to minimize what he did, Your Honor.
25 And again, I understand this is a bad crime, but I do think

1 it's important to put it in context and to compare it to other
2 people who are charged with similar -- with a similar crime.

3 The second aspect that we want to point out, Your
4 Honor, is that it's an isolated sexual crime. So he does this
5 when he's 29 years old. There's absolutely no evidence that
6 he did this before. And then notably, he was not arrested for
7 two years, Your Honor, after this happens, and he doesn't do
8 anything like this after. And at the time that he is
9 communicating with this girl, Your Honor, she is the only
10 minor that he is in communication with.

11 I think all of those things do make this case
12 different than other cases that fall under this statute, Your
13 Honor. All of his electronics were searched top to bottom
14 when he was arrested two years later. The phone that actually
15 was involved in this offense was not -- he did not -- no
16 longer had that particular phone, but the phone that he did
17 have showed no evidence of new activity.

18 Third, we want to point out that he did not
19 distribute this widely. He did not upload this to the
20 internet. He didn't share. He didn't threaten to share. And
21 he did cooperate with law enforcement, which we think is
22 important.

23 Your Honor, I think that, you know, the guidelines
24 in this case are very high. 292 to 327 months is a very high
25 guideline range. And over the course of the last few days,

1 I've been looking at other cases in front of Your Honor that
2 had -- that were manufacturing child pornography cases.
3 That's the guideline that this case falls under.

4 He's pled to enticement, but the guideline is this
5 manufacturing child pornography. And some of the fact
6 scenarios in the cases that have been before Your Honor, you
7 know, are some of the worst fact scenarios that probably come
8 before this Court.

9 Looking at some of the other ones, Your Honor, I
10 mean, I know that you probably -- I would imagine that these
11 probably all come to your mind very readily. Albritton, who
12 molested a three year old, got 360 months. Ensenat, who
13 videoed himself having sex with a 10 year old got 390 months.
14 Pildred (phonetic) took photos of a sex act with a one year
15 old, got 360 months. Daniels molested his 13-year-old
16 stepdaughter for years, took videos, distributed widely, got
17 360 months. Dennis Johnson had step-children acting out
18 things together, distributed widely, got 360 months. Some of
19 the worst of the worst fact patterns. And by no means am I
20 saying that his fact pattern is not also bad, but I think -- I
21 think that it is important to put it on a spectrum, Your
22 Honor. I think that the guidelines may be overly punitive in
23 this case. And our different -- this conduct is different
24 than the kind that I think are more deserving of super
25 serious, lengthy punishments.

1 I would ask you to look very carefully at the
2 pattern enhancements, Your Honor. I agree that by the
3 language of the guidelines that it applies because he had the
4 victim send multiple photos to him. I agree that the language
5 of the guidelines say that it should apply. But I would ask
6 you to consider the background section of that enhancement,
7 which says that it applies to offenders who present a
8 continuing danger to the public and also to ensure lengthy
9 incarceration for offenders who engage in a pattern of
10 activity involving the sexual abuse or exploitation of minors.
11 And so I think that his conduct, while it does technically
12 qualify, I think that, you know, a five-level enhancement,
13 Your Honor, I mean, we're talking about increasing him from
14 168 months, which is 14 years, up to 292 because multiple
15 photos were produced.

16 And I think that that -- that is a really enormous
17 increase, Your Honor, and I would ask that you look carefully
18 at that and decide whether or not that full increase is
19 warranted.

20 One, I think that he is different from other people
21 who are motivated by a sexual deviance. I think that the
22 danger that he poses to commit another sex crime is lower
23 because of the absence of an underlying deviance.

24 And two, I think the pattern, at the very least, it
25 falls within the most narrow, you know, definition of pattern;

1 or, I guess, most expansive definition of pattern in that
2 there were not multiple victims. This did not occur over a
3 lengthy period of time. The same five levels would have
4 applied had there been multiple victims, had it occurred over
5 a two-year period. And so we would ask you to consider
6 whether the full weight of that five-level enhancement is
7 warranted. And we appreciate the Court's consideration.

8 THE COURT: Thank you.

9 At this time I'll hear from Mr. Painter, if you'd
10 like to make a statement, sir.

11 THE DEFENDANT: Yes, sir. I'm not here, you know,
12 to try to place blame on anybody. Like I take full
13 responsibility for what I did. I know what I did. Having
14 communications like this with an underage girl was wrong in
15 all means. And I apologize for that, even to her and her
16 family, all this stress and pain I put them through. I'm just
17 sorry for all of that. I didn't mean to do any of it.

18 THE COURT: Thank you.

19 I'll hear any victim allocution, and then I'll hear
20 from the United States.

21 MR. PUGH: Yes, Your Honor. The U.S. Attorney's
22 Office has been in contact with the victims. They are not
23 participating in the sentencing and have made clear that they
24 just want to put this behind them.

25 This has been a traumatic event for the family, and

1 I believe once the victim realized what really happened here,
2 she's simply embarrassed.

3 Turning to the offense conduct, this is a 14 year
4 old who wasn't even in high school yet. This is a girl who
5 was still in middle school. And it was the middle school
6 guidance counselor that helped bring this to everyone's
7 attention. In the course of the chats, she references going
8 to talk to her mom, watching a scary movie, discussing with
9 her friends Mr. Painter's age. It was abundantly clear how
10 old this girl was.

11 Mr. Painter might have, on some level, thought he
12 was in a relationship, but really that's willful blindness.
13 It's evident from the chats that he knew what he was doing was
14 wrong; the discussions about if they find out, they'll lock me
15 up and the other discussions about the age. This was a child
16 that he was taking advantage of. This was far, far from a
17 relationship.

18 I will acknowledge that this was an isolated
19 incident as far as we know; however, I will push back on the
20 idea that this was a short timeframe. This ended because the
21 mother found out about these chats and these photos I believe
22 on January 21st, and the chat history as set forth in the PSR
23 has photos exchanged right up to that date.

24 I've already spoke about Mr. Painter's cooperation.
25 Taking that into account, we are asking for the 219 months

1 that I set forth in that motion.

2 THE COURT: Thank you.

3 Anything else, Ms. Shea?

4 MS. SHEA: No, Your Honor. Thank you.

5 (Pause in the proceeding.)

6 MS. SHEA: I'm sorry, Your Honor. Can I say one
7 more thing?

8 THE COURT: Yes.

9 MS. SHEA: One case that I did find that was
10 sentenced before Your Honor that had the most similar facts
11 was a case called *United States versus Sean Dixon*. In that
12 case, the defendant communicated with a 12 year old online,
13 and they exchanged sexual photos. Similarly, he was charged
14 with manufacturing, but it was dismissed, and he was allowed
15 to plead to enticement.

16 I will concede that Mr. Dixon had more mitigating
17 factors than Mr. Painter. He had no record, and he was in the
18 military. For some reason, the guidelines in that case did
19 not cross reference to manufacturing child pornography. I
20 don't understand why not. It seems like it would have. But
21 he was sentenced to 126 months, which was a guideline
22 sentence.

23 And I would ask you to consider just the nature of
24 the conduct here and the need to avoid unwarranted sentencing
25 disparities as another basis in addition to the collateral

1 consequences that he will face as a result of the sex offender
2 conviction.

3 THE COURT: Thank you.

4 (Pause in the proceeding.)

5 THE COURT: Mr. Painter, the Court recognizes its
6 obligation to impose a sentence sufficient but not greater
7 than necessary to comply with the purposes set forth in the
8 statute.

9 I have considered all arguments that your lawyer has
10 made. I have considered your statement. I have considered
11 the position of the United States. I have considered the
12 advisory guideline range.

13 Among other things, I'm to consider -- I've also
14 considered the Government's motion under Section 5K1.1, which
15 I've granted.

16 Among other things, I'm to consider the nature and
17 circumstances of the offense and the history and
18 characteristics of the defendant; the need for the sentence
19 imposed to reflect the seriousness of the offense, to promote
20 respect for the law and to provide just punishment; the need
21 for the sentence imposed to deter others who might choose to
22 engage in the criminal behavior that brings you here; the need
23 for the sentence imposed to protect the public from further
24 crime by you; the need for the sentence imposed to provide you
25 with needed educational or vocational training, medical care

1 or other correctional treatment in the most effective manner.

2 The statute lists numerous other factors. I've
3 considered all those factors, although I won't mention each
4 one individually.

5 As for the nature and circumstances of the offense,
6 you did plead guilty to enticement of a minor. The offense
7 conduct is described in the PSR in paragraphs 7 through 12.
8 On January 22nd, 2018, the mother of a 14-year-old child
9 attending middle school in Ohio was notified by a guidance
10 counselor at that middle school that her child was talking to
11 an older man, identified later as you, and that you had
12 exchanged nude pictures with each other.

13 The report then recounts your online communications
14 with this child that began in December of 2017. Conversations
15 then became sexual. You had the child send you a variety of
16 nude photographs and engaged in sexually explicit
17 conversations with the child. You encouraged her to send
18 those photos of herself and asked her to do things to her body
19 on those photographs. According to paragraph 8, the child
20 told you she was 14 years old. You told her you were 29.

21 The only reason you stopped is because you got
22 caught. I don't consider this to be a brief aberration. I
23 think it's egregious conduct by you directed at a child.
24 You're an adult man, and you exploited this child, and you did
25 it for your own gratification. And it's terrible, and you

1 should be punished for it, and you will be punished for it.

2 I've taken into account every argument made. I
3 remember all of those cases. All of them are horrific. I do
4 not think you're similarly situated with Sean Dixon.

5 As for your history and characteristics beyond this
6 criminal behavior directed at this child, you have a GED.
7 You're 32 years old. You have a criminal history category of
8 III. You have a conviction for assault on a female at age 20,
9 paragraph 17. Common law robbery in paragraph 18. Attempting
10 to obtain money by false pretenses in paragraph 20.

11 I've taken into account all the arguments associated
12 with the assessment. I understand you do not have a
13 paraphilia or paraphilic interest in children. That doesn't
14 change what you did to this child. Her life has changed
15 forever because of you and how you exploited her.

16 I do not think the sentence suggested by your
17 counsel would remotely be sufficient to provide just
18 punishment or to incapacitate you or to generally deter others
19 who might think that this is behavior that is acceptable in
20 this society. It is not. It cannot be. It is a serious
21 crime that warrants serious punishment. I do not think the
22 Government's recommendation is sufficient.

23 I've taken into account your cooperation and
24 substantial assistance, but the serious nature of this
25 criminal behavior that only stopped because you got caught is

1 conduct that warrants serious punishment, and you will receive
2 serious punishment.

3 I've considered the argument about the pattern
4 enhancement and the background commentary. I think it applies
5 appropriately in this case. I don't think it overstates. I
6 think the guidelines provide bad advice in terms of a starting
7 point to then work down based on the substantial assistance
8 and then to work back up to account for the serious nature of
9 this criminal behavior, the need to incapacitate this
10 defendant, the need to punish this defendant justly, the need
11 to deter others who might think that exploiting a child in
12 this way is somehow acceptable or won't result in a serious
13 punishment. It will and should. This little girl was in
14 middle school. And you exploited her. In a terrible way.

15 Having fully considered the entire record in this
16 case, the need to punish this defendant justly, taking into
17 account his history and characteristics, extremely serious
18 nature of this criminal behavior, the need to incapacitate
19 him, the need to avoid unwarranted sentencing disparities,
20 taking into account his substantial assistance, taking into
21 account his entire family history and all the arguments his
22 counsel made, it's the judgment of the Court that Toby Painter
23 is hereby committed to the custody of the Bureau of Prisons to
24 be imprisoned for 240 months. Pursuant to the plea agreement,
25 Counts 1, 2, 3, and 4 are dismissed.

1 Upon release, you'll be placed on supervised release
2 for 15 years. After carefully considering the 3583(d) factors
3 and the 3553(a) factors, you'll comply with the mandatory and
4 standard conditions of supervision as adopted in the Eastern
5 District of North Carolina and comply with the following
6 additional conditions:

7 In light of the reports, indication of your
8 substance abuse history, particularly as it relates to
9 marijuana, you'll participate in a program approved by
10 Probation for the treatment of narcotic addiction. You'll
11 participate in a mental health treatment program in light of
12 the issues associated with your mental health that are
13 reflected in the report and reflected in the exhibit your
14 lawyer handed up. You'll consent to a warrantless search by
15 Probation or at the request of the probation officer or any
16 other law enforcement officer of your person and premises,
17 including any vehicle, to determine compliance with the
18 conditions of this judgment. You'll cooperate in the
19 collection of DNA. You'll have no contact, direct or
20 indirect, with the victim of this criminal behavior that you
21 engaged in unless provided with specific written authorization
22 in advance by the U.S. probation officer. You'll submit to
23 psychosexual evaluation by a qualified mental health
24 professional experienced in evaluating sexual offenders.
25 You'll participate in a sex offender treatment program as

1 directed by Probation and comply with any rules of such
2 treatment program. You'll take any medication that's
3 prescribed as part of that program by a qualified physician.
4 At the direction of Probation, you'll submit to physiological
5 testing, which may include polygraph examinations or other
6 tests to monitor your compliance with probation or supervised
7 release conditions.

8 Your residence and employment shall be approved by
9 Probation. Any proposed change in residence are one that must
10 be provided to a probation officer at least 10 days before the
11 change and preapproved before a change may take place. You
12 shall not possess materials depicting or describing child
13 pornography or simulated child pornography as defined in 18
14 U.S.C., Section 2256.

15 You shall comply with the requirements of the Sex
16 Offender Notification and Registration Act as directed by
17 Probation, Bureau of Prisons, or any state or travel
18 government, sex offender registration agency in a state where
19 you reside, work or a student or convicted of a qualifying
20 crime. You shall not use, purchase, procure or otherwise
21 obtain a computer or electronic device that can be linked to a
22 computer network, internet service provider or exchange format
23 involving computers unless approved by Probation.

24 To make sure of compliance, you shall submit to
25 unannounced searches of the computer or computer equipment,

1 including mobile phones, at the discretion of the probation
2 officer. Given how you committed this crime, this is an
3 appropriate condition.

4 At the direction of Probation, you'll consent to the
5 installation of systems or software that will allow Probation
6 or a designee to monitor computer use or any computer that you
7 own or are authorized to use. You'll pay the cost of that
8 monitoring. You shall not use, possess or control any
9 computer-based counter-forensic tools. You shall not use or
10 have installed any programs specifically and solely designed
11 to encrypt data, files, folders or volumes, and any media
12 shall, upon request, immediately provide probation officer
13 with any and all passwords required to access data, compressed
14 or encrypted for storage, by any such software in light of how
15 you committed this crime.

16 You shall support your child. You shall pay a
17 special assessment of \$100. Because you do not have the
18 ability to pay an assessment, under the Justice for Victims of
19 Trafficking Act of 2015, I'm not going to impose that.

20 So there is no request for restitution, Mr. Pugh?

21 MR. PUGH: That's correct.

22 THE COURT: I'm not going to impose a fine. After
23 you pay your special assessment, any money you earn will go to
24 support your child.

25 I do think I've properly calculated the advisory

1 guideline range, but I announce pursuant to *U.S. v.*
2 *Gomez-Jimenez*, 750 F.3d 370 (4th Cir. 2014) and *U.S. v.*
3 *Hargrove*, 701 F.3d 156 (4th Cir. 2012), that I'd impose the
4 same sentence as an alternative variant sentence if I have in
5 any way miscalculated the advisory guideline range. This is
6 the sentence sufficient but not greater than necessary for
7 Mr. Painter in light of all the 3553(a) factors that I've
8 discussed.

9 In imposing this sentence, I've carefully considered
10 each word each counsel has said to me in connection with this
11 case and all the written materials in the record. Simply
12 because I have not parroted back each word does not mean I
13 have not considered it to the extent my sentence is
14 inconsistent with any sentence requested by either counsel.
15 It is because I have rejected their requests as inconsistent
16 with the 3553(a) factors as I have balanced them and
17 articulated them in this case.

18 Mr. Painter, you can appeal your conviction if you
19 believe that your guilty plea was somehow unlawful or
20 involuntary or if there's some other fundamental defect in the
21 proceeding that was not waived by your guilty plea.

22 You also have a statutory right to appeal your
23 sentence under certain circumstances, particularly if you
24 think your sentence is contrary to law.

25 However, you did enter into a plea agreement that

1 contains an appellate waiver. In light of your sentence, I
2 believe you've waived your right to appeal your sentence.

3 If you believe the waiver is unenforceable or
4 inapplicable for any reason, you can present that theory to
5 the Appellate Court.

6 With few exceptions, any Notice of Appeal must be
7 filed within 14 days of the judgment being entered on the
8 docket in your case.

9 If you're unable to pay the cost of an appeal, you
10 may apply for leave to appeal *in forma pauperis*.

11 If you so request, the Clerk of Court will prepare
12 and file a Notice of Appeal on your behalf.

13 Did you want to recommend a facility, Ms. Shea?

14 MS. SHEA: Yes, Your Honor. If you would consider
15 recommending Butner.

16 THE COURT: I will recommend FCI Butner so that
17 Mr. Painter's mother can continue to be a part of his life.

18 Anything else from the Government?

19 MR. PUGH: No, Your Honor.

20 THE COURT: Did you want me to make any other
21 recommendations?

22 MS. SHEA: No, Your Honor.

23 We note our objection to the one condition, Your
24 Honor, about physiological testing, including polygraphs.

25 THE COURT: I think that that is an appropriate

1 condition in light of Mr. Painter's offense conduct in this
2 case as a safeguard associated with protecting society. So
3 your objection is noted.

4 MS. SHEA: Thank you, Your Honor.

5 THE COURT: He'll be remanded.

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8 (The proceedings concluded at 4:21 p.m.)
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1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
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5 CERTIFICATE OF OFFICIAL REPORTER
6

7 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
8 Court Reporter, in and for the United States District Court
9 for the Eastern District of North Carolina, do hereby certify
10 that pursuant to Section 753, Title 28, United States Code,
11 that the foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is
14 in conformance with the regulations of the Judicial Conference
15 of the United States.
16
17

18 Dated this 26th day of February, 2021.
19
20

21 /s/ Amy M. Condon
22 Amy M. Condon, CRR, CSR, RPR
23 U.S. Official Court Reporter
24
25